

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Jan Chipchase
Title: SYSTEM AND METHOD FOR
VIRTUAL ENTITY ACCESS
Appl. No.: 10/718,822
Filing Date: 11/21/2003
Examiner: Venkatanaray Perungavoor
Art Unit: 2432
Confirmation Number: 1339

REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT
UNDER 37 C.F.R. §1.705

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicant is in receipt of the Notice of Allowance for the above-referenced application. Applicant disagrees with the Determination of Patent Term Adjustment (PTA) under 35 U.S.C. § 154(b) and present the following facts per procedure set forth in 37 C.F.R. § 1.705(d) to support their contention that the patent term adjustment should be 1,420 days instead of 1,099 days as calculated by the United States Patent and Trademark Office (USPTO).

The Patent Office determined that the patent was entitled to 1099 days of PTA. Applicants believe that this PTA determination was made in accordance with the “Explanation of 37 CFR 1.703(f) and of the United States Patent and Trademark Office Interpretation of 35 U.S.C. §154(b)(2)(A)” published at 69 Fed. Reg. 34238 (Jun. 21, 2004). Under that interpretation of the PTA statute, any PTO delay under 35 U.S.C. § 154(b)(1)(A) is deemed to overlap with any 3-year maximum pendency delay under 35 U.S.C. § 154(b)(1)(B), and so, as a practical effect, PTA may be awarded under §154(b)(1)(A) or §154(b)(1)(B), but not both.

On January 7, 2010, the U.S. Court of Appeals for the Federal Circuit affirmed the September 30, 2008 decision of the United States District Court for the District of Columbia

finding that the U.S. Patent and Trademark Office's interpretation of the PTA statute is incorrect. *Wyeth v. Kappos*, No. 2009-1120 (Jan. 7, 2010). The Federal Circuit determined that "[b]efore the three-year mark, no 'overlap' can transpire between the A delay and the B delay," and that "[i]f an A delay occurs on one day and a B delay occurs on a different day, those two days do not 'overlap' under section 154 (b)(2)."

Applicants have recalculated PTA for the captioned patent under the court's interpretation of the PTA statute, and have determined that the patent is entitled to 1420 days PTA, as shown on the attached sheet, which shows the relevant delays under 37 CFR §§1.702(a) and (b), and under 37 CFR §§1.703(a) and (b).

There were no circumstances during the prosecution of the application resulting in the patent that constitute a failure to engage in reasonable efforts to conclude processing or examination of such application as set forth in § 1.704.

(a) Total of non-overlapping PTO delay under §154(b)(1)(A) & (B): 1420 days

(b) Total Applicant delay: 0 days

Final PTA Determination: 1420 days

Applicants therefore respectfully request that the patent be accorded 1420 days PTA.

The patent is not subject to a terminal disclaimer.

Payment of the requisite fee is submitted herewith. Should no proper payment be enclosed herewith, as by the credit card payment instructions in EFS-Web being incorrect or absent, resulting in a rejected or incorrect credit card transaction, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741.

However, because this PTA error is due to a Patent Office error in interpreting and applying the PTA statute, a refund of the fee is respectfully requested.

Respectfully submitted,

By _____

Date January 13, 2010

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Patent Term Adjustment Calculation System

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Docket Number: 088245-1060

Application Number: 10/718822

Patent Number: N/A

	Event Description	Event Date	Days from Filing	PTO Days	Applicant Days
Edit Delete	Application Filing Date	11/21/2003	0		
	14 month From Application date	01/21/2005	427		
	3 Year Period Starts	11/21/2006	1,096		
Edit Delete	Non-Final Office Action	01/25/2008	1,526	(1099)	
Edit Delete	Non-Final Office Action Rsp. Rcv'd at PTO	04/21/2008	1,613		
Edit Delete	Final Office Action	06/17/2008	1,670		
Edit Delete	Final Office Action Response Received at PTO	07/18/2008	1,701		
Edit Delete	Advisory Action	07/31/2008	1,714		
Edit Delete	Notice of Appeal Received at PTO	09/16/2008	1,761		
Edit Delete	Pre-Appeal Brief Request Received at PTO	09/16/2008	1,761		
Edit Delete	Appeal Decided by Appeal Board; All Rejections Maintained	11/13/2008	1,819		
Edit Delete	Request For Continued Examination (including amendment)	12/11/2008	1,847	(751) 1420	
Edit Delete	Request For Continued Examination (including amendment)	12/11/2008	1,847		
	3 Year Period Stopped	12/11/2008	1,847		
Edit Delete	Non-Final Office Action	02/12/2009	1,910		
Edit Delete	Non-Final Office Action Rsp. Rcv'd at PTO	05/11/2009	1,998		
Edit Delete	Final Office Action	07/20/2009	2,068		
Edit Delete	Final Office Action Response Received at PTO	09/18/2009	2,128		
Edit Delete	Notice of Allowance	10/16/2009	2,156		
	Projected Patent Grant Date	04/27/2010	2,349		
			Totals:	1,420	0
			PTA:	1,420	

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Version: 3.02.05

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